REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2290** (CTA Case No. 9475)
	Present:
	Del Rosario, *P.J.*, Castañeda, Jr., Uy, Ringpis-Liban, Manahan, Bacorro-Villena, Modesto-San Pedro, Reyes-Fajardo, and Cui-David, *JJ.*
- versus -	
NEW FARMERS PLAZA, INC. *Respondent.*	Promulgated: MAY 06 2022 10:54 am

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DECISION

RINGPIS-LIBAN, *J.:*

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue *via* electronic mail within the extended period granted by this Court on August 3, 2020.[2] It seeks the reversal of the Decision dated January 14, 2020,[3] (Assailed Decision) as well as the Resolution dated June 26, 2020[4] (Assailed Resolution) of the First Division (Court in Division)[5] of this Court in CTA Case No. 9475.

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[1] Court *En Banc's* Docket, pp. 14-31.
[2] *Id.*, p. 12.
[3] *Id.*, pp.
[4] *Id.*, pp.
[5] Composed of Presiding Justice Roman G. Del Rosario, Associate Justice Esperanza R. Fabon-Victorino *(ponente)* and Associate Justice Catherine T. Manahan.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> "**WHEREFORE**, finding merit in the appeal, the instant Petition for Review filed on September 22, 2016 by New Farmer's Plaza, Inc. is **PARTLY GRANTED.**
>
> Accordingly, the Warrant of Distraint and Levy dated October 22, 2013 issued against petitioner, is **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED.**"

Assailed Resolution:

> "**WHEREFORE**, respondent Commissioner of Internal Revenue's Motion for Reconsideration dated February 3, 2020 is **DENIED**. The assailed Decision dated January 14, 2020 is **AFFIRMED**.
>
> **SO ORDERED.**"

THE FACTS

The facts of the present case were laid down by the Court in Division in the Assailed Decision as follows:[6]

> "Petitioner is a domestic corporation engaged in the business of buying, selling, renting, leasing, developing, and managing realty, with registered office address at 26th Floor Gateway Tower Araneta Center 1109 Quezon City.
>
> Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency charged with the responsibility of collecting all national internal revenue taxes.
>
> Respondent NEB was constituted under Section 204(A) of the National Internal Revenue Code (NIRC) of 1997, composed of respondent CIR and four (4) Deputy Commissioners. It has the

[6] Court *En Banc's* Docket, pp. 34-42 (Citations omitted).

authority to approve compromises where the basic tax involved exceeds ₱1,000,000.00.

Respondent REB of Revenue Region No. 7 was constituted under Section 7(c) of the NIRC of 1997, is composed of the Regional Director as Chairman, with Assistant Regional Director, heads of the Legal, Assessment, and Collection Divisions, and Revenue District Officer having jurisdiction over the taxpayer, as members. It has the power to approve compromise assessments issued by the said Revenue Region involving basic deficiency taxes of ₱500,000.00 or less, and rule on minor criminal violations, as may be determined by the rules and regulations promulgated by the Secretary of Finance, upon recommendation of respondent.

On September 5, 2008, respondent CIR issued *Letter of Authority* No. (LOA) No. 00026774 authorizing Revenue Officer Victoria C. Fontanilla and Group Supervisor Edgardo C. Uy to examine the books of accounts and other accounting records of petitioner.

In relation to the investigation, petitioner executed the following *Waivers of the Defense of Prescription*:

Waiver	Date of Execution	Date of BIR's Acceptance	Date of Extension
1st	March 3, 2010	March 19, 2010	June 30, 2011
2nd	May 27, 2011	(No acceptance)	December 31, 2011

Subsequently, respondent issued a *Preliminary Assessment Notice* (PAN), informing petitioner of its deficiency taxes, inclusive of interest and surcharge for CY 2007 as follows: income tax of ₱86,356,633.78, value-added tax (VAT) of ₱39,952,859.94, expanded withholding tax (EWT) of ₱114,424.00, final withholding tax (FWT) of ₱13,485,136.99, and compromise penalty of ₱14,000.00. Petitioner did not reply to the PAN.

On June 24, 2011, respondent issued a *Formal Letter of Demand* (FLD), assessing petitioner of deficiency taxes, plus compromise penalties, in the sum of ₱142,600,181.95, detailed as follows:

	Basic Tax	**Increments**	**Compromise Penalties**	**Total**
Income Tax	₱53,207,581.58	₱ 34,840,032.87	-	₱ 88,047,614.45
VAT	23,961,212.42	16,753,154.55	-	40,714,366.97
EWT	68,399.54	48,198.25	-	116,597.79
FWT	7,000,000.00	6,682,602.74	-	13,682,602.74
Compromise Penalties	-	-	39,000.00	39,000.00

Aggregate Total	**₱ 84,237,193.54**	**₱ 58,323,988.41**	**₱ 39,000.00**	**₱ 142,600,181.95**

Petitioner did not file protest against the FLD.

More than three years thereafter, petitioner received a Warrant of Distraint and Levy (WDL) dated October 22, 2013.

In May 2014, petitioner filed an *Application for Compromise* dated May 2, 2014 before the Regional Director's Office of Revenue Region No. 7 - Quezon City.

On August 23, 2016, petitioner received the assailed *Notice of Denial* dated June 1, 2016 of its Application for Compromise issued by respondent REB demanding payment of petitioner's alleged deficiency taxes in the amount of ₱104,664,264.81. The deficiency tax assessment remains unsettled to date.

On September 22, 2016, petitioner filed the instant *Petition for Review.*

In its belatedly filed *Answer*, respondent points out that a compromise agreement is in the nature of a contract which requires mutual consent of the parties thereto. Further, the power and discretion to approve or disapprove the compromise agreement belongs to respondent, who cannot be compelled to approve or disapprove it, absent any law or rule mandating the same. Without the compromise agreement entered into by the parties, the Court is bereft of jurisdiction to review the present case.

In its *Reply*, petitioner argues that the Court has jurisdiction over this case pertaining to 'other matters' clause of its enabling law, namely, Republic Act (RA) No. 1125, as amended. The subject compromise can be reviewed by the Court as the law never intended respondent to have unbridled and absolute control over such compromises. Besides, the disapproval of respondent of the compromise agreement was improper due to the dubious validity of the assessment. Moreover, the FLD issued on June 24, 2011, or beyond the 3-year prescriptive period, was not properly served on its authorized representatives. Petitioner further states that of the 2 Waivers of the defense of prescription executed by the parties, only the first could be considered as valid since the FLD issued within the second extended period of the second Waiver had prescribed. Estoppel on the part of petitioner to invoke the defense of prescription would not lie as respondent failed to allege specific facts and acts for its application.

On June 7, 2017, the parties filed their *Joint Stipulation of Facts and Issue* (JSFI), which the Court approved in its Resolution dated July 3, 2017, thereby terminating the Pre-Trial Conference. On August 1, 2017, a Pre-Trial Order was issued by the Court.

In support of its case, petitioner presented as its witnesses Romeo Tan, consultant of Araneta Center, Inc. (ACI), petitioner's parent company, and Kenneth A. Mondero, Senior Vice-President for Finance of ACI.

Witness **ROMEO M. TAN** testified that part of his duties as consultant of ACI, the company that owns petitioner as a subsidiary, is to supervise and oversee petitioner's books, tax assessment cases, and communications with the BIR, thus, he is familiar with the present case.

On April 15, 2008, petitioner filed its Annual Income Tax Return (AITR) for the year 2007. It also filed its Quarterly VAT Returns for the first to the fourth quarters of 2007 on April 22, 2007, July 24, 2007, October 22, 2007, and January 24, 2008, respectively.

Petitioner likewise filed its monthly EWT Returns for 2007, the latest of which was on January 11, 2008.

Subsequently, the BIR issued a Letter of Authority (LOA) dated September 5, 2008, with a First Request for Presentation of Records. Petitioner complied.

During the conduct of audit, the Revenue Officers (ROs) conducting the audit required petitioner to execute Waivers of the defense of prescription which he signed just like the second Waiver.

The witness claimed that he was compelled to sign the two Waivers although he knew that as a consultant of ACI and not officer of petitioner, he had no authority to do it as the ROs told him that without the Waivers, a formal assessment would immediately issue to the prejudice of petitioner. In any event, he was not censured or sanction[ed] by petitioner for signing the two Waivers in its behalf. The witness admitted that he was not forced to sign the two Waivers indicating that he was the authorized representative of petitioner. According to the witness the execution of two Waivers benefited petitioner.

Later, the BIR issued the PAN which petitioner's accounting staff received. The witness believed that the PAN should be deemed as not received as the person to whom it was served was not the authorized representative of petitioner. He was informed about the

service of the PAN after the time to file reply thereto had already lapsed.

Similarly, the FLD served by the BIR to petitioner's accounting department should as well be deemed not received by petitioner. He learned about the FLD after the period to file protest against it had lapsed, for which reason, petitioner was not able to timely file a protest against the FLD. The PAN and FLD were received by the same personnel assigned at petitioner's Accounting Department.

On October 22, 2013, petitioner properly received the Warrant of Distraint and/or Levy (WDL), through the same personnel assigned at its accounting department. No further action was taken by the BIR to collect from petitioner the alleged deficiency taxes.

To the mind of the witness, the assessment was invalid for the BIR's failure to conduct proper audit/examination of petitioner's books of account and other accounting records. He claimed that the assessment was solely based on petitioner's tax returns, audited financial statements, and schedules submitted to the BIR. The subject assessment based on erroneous presumptions should be deemed as a naked assessment.

The witness further testified that petitioner filed with the BIR an Application for Compromise dated May 2, 2014 on the ground of reasonable doubt on the validity of the assessment. Petitioner paid the compromise amount of ₱37,974,917.14, as computed by the BIR and required under Revenue Regulations (RR) No. 09-13. Nothing followed after this payment until petitioner received the assailed Notice of Denial dated June 1, 2016 of its Application for Compromise.

Witness **KENNETH A. MONDERO**, testified that he is the Senior Vice-President for Finance of ACI, whose duties is to extend management services to ACI's subsidiaries, such as petitioner. He deals with various government agencies, including the BIR. As a company policy, all communications from government agencies should be forwarded to the addressee, and in the absence thereof, to him. However, prior to petitioner's receipt of the WDL issued by the BIR, no correspondences or notices was forwarded to him, including the PAN and FLD issued in this case.

Petitioner rested after filing its Formal Offer of Evidence on November 17, 2017, which the Court resolved in the Resolutions dated February 27, 2018, and May 16, 2018.

For their part, respondents presented its lone witness BIR Revenue Officer II, **LOIDA E. TAGUIAM**.

She testified that prior to June 1, 2018, she was a seizure agent of the BIR assigned at Revenue District Office No. 40-Cubao, Quezon City, Revenue Region No. 7. Her duties mainly pertain to the enforcement of collection proceedings and preparation and service of collection notices.

As authorized in the Memorandum of Assignment, she conducted the collection process of the deficiency tax liability of petitioner for the year 2007.

Her examination of the BIR Record of the case, revealed that the Letter of Authority (LOA) dated September 5, 2008, Preliminary Assessment Notice (PAN) and Details of Discrepancies, and the Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) dated June 24, 2011 had been issued and served upon petitioner. She also found in the same BIR Record the Memorandum Report to the Regional Director, the Revenue Officer's Audit Reports, and the Waiver of the defense of prescription dated April 26, 2010.

On its face, the FAN/FLD was issued on June 24, 2011, but received by petitioner's employee on June 17, 2011. She however explained that copies of the FAN/FLD were served to petitioner through personal service and through the mail on different occasions, thus, the apparent discrepancy.

Since the subject deficiency tax liability had not been paid despite the notices issued for that purpose, she prepared the subject WDL dated October 22, 2013, which was served upon petitioner on the same date.

In the Resolution dated September 3, 2018, the Court admitted respondents belatedly filed *Formal Offer of Evidence.*

The case was submitted for decision on January 14, 2019."

On January 14, 2020, the Court in Division rendered the Assailed Decision partially granting the Petition for Review. The Court in Division cancelled and set aside the Warrant of Distraint and Levy (WDL) issued by petitioner against the respondent.

Aggrieved, the CIR filed *via* registered mail a Motion for Reconsideration (Decision dated 14 January 2020) on February 3, 2020 which the Court in Division denied in the Assailed Resolution.

On August 3, 2020, petitioner filed the present Petition for Review.

In a Resolution dated October 29, 2020, this Court required respondent to file its Comment to the Petition for Review within ten (10) days from receipt thereof.[7]

On November 27, 2020, respondent filed its Comment (To the Petition for Review Dated 30 July 2020).[8]

In a Resolution dated January 4, 2021, this Court noted respondent's Comment and also referred the present case to mediation before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA).[9]

In a Resolution dated June 30, 2021, this Court noted that the parties have decided not to have their case mediated and thus, the present Petition for Review was submitted for decision.[10]

THE ISSUES

Petitioner submits the following issues for this Court's resolution, to wit:[11]

> I.
> THE FIRST DIVISION ERRED IN DECLARING THAT IT HAS JURISDICTION OVER THE INSTANT CASE.
>
> II.
> THE FIRST DIVISION ERRED IN RULING THAT THE DEFICIENCY ASSESSMENT AGAINST RESPONDENT FOR CY 2007 ARE NULL AND VOID FOR HAVING BEEN ISSUED IN VIOLATION OF THE DUE PROCESS REQUIREMENTS UNDER THE LAW AND REVENUE REGULATIONS NO. 12-99.
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> III.
> THE FIRST DIVISION ERRED IN DECLARING THE NULLITY OF THE ASSESSMENT AND SETTING ASIDE OF THE WARRANT OF DISTRAINT AND LEVY (WDL) ISSUED AGAINST RESPONDENT.

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[7] *Id.*, pp. 134-135.
[8] *Id.*, pp. 136-143.
[9] *Id.*, pp. 148-149.
[10] *Id.*, pp. 152-153.
[11] *Id.*, pp. 18-19.

THE COURT *EN BANC*'S RULING

After a more circumspect evaluation of the parties' arguments and the submitted issues vis-à-vis the evidence on record, the Court *En Banc* finds the Petition for Review to be meritorious.

Jurisdiction

In the present Petition for Review, the Commissioner of Internal Revenue (CIR) claims that the Court in Division erred in assuming jurisdiction over the present case.[12] It is the CIR's position that he has the discretion to approve or disapprove an application for compromise and that this Court cannot compel him to enter into a compromise agreement in the absence of any law or rule authorizing the same.[13]

Respondent, on the other hand, submits that the Court in Division correctly assumed jurisdiction over the present case and correctly provided corresponding relief in the exercise of its "other matters" jurisdiction.[14]

The Court *En Banc* agrees with respondent's submission.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[15] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action.[16] Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[17]

The Court of Tax Appeals (CTA) is a court of special and limited jurisdiction. As such, the CTA can only take cognizance of matters which are clearly within its jurisdiction. Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, provides:

> "Sec. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[12] *Id.*, pp. 19-20.
[13] *Id.*
[14] *Id.*, pp. 136-137.
[15] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015, 749 SCRA 570.
[16] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014, 718 SCRA 533 citing *Commissioner of Internal Revenue v. Villa*, 130 Phil. 3, 4 (1968).
[17] *Id.*, citing *Laresma v. Abellana*, G.R. No. 140973, November 11, 2004, 442 SCRA 156, 169.

> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;**" *(Emphasis supplied)*

Echoing the above-quoted provision is Section 3(a)(1), Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended, which, in part, provides as follows:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* - The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue."** *(Emphasis supplied)*

The Supreme Court, in *Commissioner of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation*,[18] briefly explained the meaning of the phrase "other matters", to wit:

> "As the CIR aptly pointed out, the phrase 'other matters arising under this Code,' as stated in the second paragraph of Section 4 of the NIRC, should be understood as pertaining to those matters directly related to the preceding phrase 'disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto' and must therefore not be taken in isolation to invoke the jurisdiction of the CTA. In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA, *i.e.,* **those controversies over which the CIR had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-legislative powers.** *(Emphasis and underscoring supplied; Citations omitted)*

[18] G.R. No. 207843, July 15, 2015.

What constitutes "quasi-judicial power" in relation to the Commissioner of Internal Revenue's functions under the National Internal Revenue Code of 1997, as amended (1997 NIRC) was discussed by the Supreme Court in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*,[19] as follows:

> "The Commissioner exercises administrative adjudicatory power or quasi-judicial function in adjudicating the rights and liabilities of persons under the Tax Code.
>
> Quasi-judicial power has been described as:
>
> > Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency to adjudicate the rights of persons before it. ***It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law***. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, ***where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it***. (Emphasis supplied; citations omitted)
>
> In carrying out these quasi-judicial functions, the Commissioner is required to 'investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.'"

Measured against the foregoing definition, the CIR's power to enter into a compromise agreement under Section 204(A) of the 1997 NIRC appears to be one of quasi-judicial nature because in exercising such discretionary authority, the CIR is essentially adjudicating the rights and liabilities of taxpayers under the 1997 NIRC, *i.e.,* determining whether or not they are entitled to avail of the compromise for the settlement of their tax liabilities. In doing so, the CIR is required to determine facts that would be the basis for his decision, as guided by the standards and parameters set by law. Correspondingly, the denial of offers of compromise, such as in the present case, squarely falls under the "other matters" jurisdiction of this Court.

[19] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

To be sure, this Court can look into the manner of exercise of the CIR's authority to enter into a compromise notwithstanding the discretionary nature thereof. On this point, this Court takes its guidance from the Supreme Court *En Banc*'s ruling in *Philippine National Oil Company v. The Hon. Court of Appeals et. al.*,[20] wherein it was held that:

> " x x x Despite this lack of legal support for the execution of the said compromise agreement, PNB argues that the CTA still had no jurisdiction to review and set aside the compromise agreement. **It contends that the authority to compromise is purely discretionary on the BIR Commissioner and the courts cannot interfere with his exercise thereof.**
>
> **It is generally true that purely administrative and discretionary functions may not be interfered with by the courts; but when the exercise of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right, with this Court having the last say on the matter.**
>
> The manner by which BIR Commissioner Tan exercised his discretionary power to enter into a compromise was brought under the scrutiny of the CTA amidst allegations of 'grave abuse of discretion and/or whimsical exercise of jurisdiction.' **The discretionary power of the BIR Commissioner to enter into compromises cannot be superior over the power of judicial review by the courts.**
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> **The discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained. No such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency.** In this case, the BIR Commissioner's authority to compromise, whether under E.O. No. 44 or Section 246 of the NIRC of 1977, as amended, can only be exercised under certain circumstances specifically identified in said statutes. **The BIR Commissioner would have to exercise his discretion within the parameters set by the law, and in case he abuses his discretion, the CTA may correct such abuse if the matter is appealed to them."** *(Emphasis supplied and citations omitted)*

Indeed, any decision of the CIR, with regard to his discretionary authority to enter into compromise under Section 204(A) of the 1997 NIRC, alleged to have been exercised beyond the parameters set by law is subject to this Court's exclusive appellate jurisdiction. In short, this Court has jurisdiction to take cognizance of the *Notice of Denial* dated June 1, 2016 issued by petitioner of the

[20] G.R. No. 109976, April 26, 2005.

respondent's *Offer of Compromise* concerning the latter's deficiency tax assessments for CY 2007.

Validity of Assessment

Petitioner posits that the Court in Division erred in ruling as null and void the deficiency assessment he issued against respondent for having been issued in violation of due process pursuant to Section 228 of the 1997 NIRC and Revenue Regulations No. 12-99.[21] He denies any violation of due process and even pointed out that respondent, despite its receipt of the Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD), the Final Notice Before Seizure (FNBS) and the WDL, did not file any protest as provided by law nor appeal the WDL before this Court within thirty (30) days from receipt thereof.[22] He stressed that, as borne out by the records, respondent had no intention to question the assessment despite numerous opportunities given by the BIR to present its side.[23]

Respondent, on the other hand, maintains that the deficiency assessment against it is null and void for having been issued in violation of due process.[24]

This time, the Court *En Banc* agrees with the petitioner's position.

In the present case, it was never disputed and, in fact, respondent readily admitted in its Petition for Review that when it received the FLD dated June 24, 2011 on July 1, 2011, it did not file any protest thereto.[25] Consequently, the deficiency tax assessments against respondent had long attained finality and cannot be questioned on appeal.

The procedure for protesting an assessment is provided in Section 228 of the NIRC of 1997, as amended, to wit:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx

[21] Court *En Banc's* Docket, pp. 20-26.
[22] *Id.*
[23] *Id.*
[24] *Id.*, pp. 137-140.
[25] Division Docket, Vol. I, p. 14.

> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

Moreover, under Section 3.1.5 of Revenue Regulations No. 12-99, there is a "disputed assessment" when the Formal Letter of Demand and the assessment notice are administratively protested by the taxpayer within thirty (30) days from the date of receipt of the Formal Letter of Demand, thus:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.5 *Disputed Assessment.* – **The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.** xxx
>
> xxx xxx xxx

> **If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.** xxx" *(Emphasis supplied)*

Pursuant to the foregoing provisions, the protest to the formal letter of demand and the assessment notice must be made within thirty (30) days from the taxpayer's receipt of the deficiency tax assessment; otherwise, the assessment becomes final, executory, and demandable.

In *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*[26], the Supreme Court held:

> "The inevitable conclusion is that **BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they became final and unappealable**. Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits. Not only that. There arose a presumption of correctness when BPI failed to protest the assessments." (*Emphasis supplied*)

Respondent could have filed a request for reconsideration or reinvestigation against the FLD within the 30-day period set by law but it failed to do so. As a result, respondent was unable to dispute the assessment upon which the CIR could have rendered a final decision (or the CIR's inaction over which is) appealable to this Court. Respondent's failure to comply with the 30-day statutory period barred the appeal and deprived this Court of its jurisdiction to entertain and determine the correctness and/or validity of the assessment.[27] The rule is that for this Court to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the CIR to warrant a decision from which a petition for review may be taken to the Court.[28] As the Supreme Court explained in *Commissioner of Internal Revenue vs. Hon. Raul M. Gonzalez, et al.,*[29] to wit:

> "x x x [A] taxpayer's failure to file a petition for review with the Court of Tax Appeals within the statutory period rendered the disputed assessment final, executory and demandable, thereby

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[26] G.R. No. 134062, April 17, 2007.
[27] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, June 16, 2006.
[28] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*, G.R. No. 148380, December 9, 2005.
[29] G.R. No. 177279, October 13, 2010.

> precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess. **Indeed, any objection against the assessment should have been pursued following the avenue paved in Section 229 (now Section 228) of the NIRC on protests on assessments of internal revenue taxes.**" *(Emphasis supplied and citations omitted)*

While it is true that a void assessment bears no fruit,[30] it is equally and undeniably true that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional.[31] The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and also precluding the appellate court from acquiring jurisdiction over the case.[32] This Court cannot hastily proceed in determining the correctness and/or validity of a deficiency tax assessment without first inquiring whether it has the requisite authority to rule on that matter. In other words, it must first be established that the appeal was duly perfected and that this Court validly acquired jurisdiction over the case. As discussed above, this Court will only acquire jurisdiction over "disputed assessments" if there is due compliance with the procedure provided under Section 228 of the 1997 NIRC and related rules. The cart cannot be placed before the horse. After all, tax assessments are presumed correct and made in good faith and, unless duly proven otherwise, all presumptions are in favor of the correctness thereof.[33]

This Court cannot, and shall not, permit the circumvention of the unappealable character of an assessment that had long attained finality by allowing an inquiry into the validity of the assessment in the present Petition for Review considering that the same strictly involves a challenge to the correctness of the denial by petitioner of respondent's offer of compromise. This is especially so when there was not even a substantial compliance with the procedure provided under Section 228 of the 1997 NIRC and related rules. Truth be told, an application for compromise under Section 204(A) of the 1997 NIRC is neither a part of nor a continuation of the assessment process as governed by Section 228 of the 1997 NIRC.

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[30] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 647; *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 396.

[31] *Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010, 628 SCRA 105; *China Banking Corporation v. City Treasurer of Manila*, G.R. No. 204117, July 1, 2015, 761 SCRA 238, 251; *Neypes v. Court of Appeals*, G.R. No. 141524, September 14, 2005, 469 SCRA 641.

[32] *Id.*

[33] *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005; *Collector of Internal Revenue v. Bohol Land Transportation Co.*, G.R. Nos. L-13099 and L-13462, April 29, 1960.

Cancellation of WDL

Petitioner likewise asserts that the Court in Division erred in declaring the nullity of the assessment and setting aside the WDL given that both the FLD and the WDL have already became final and executory due to respondent's failure to seasonably file a protest against the FLD or an appeal against the WDL before this Court.[34] Petitioner also emphasizes that what was appealed before this Court in the present case is the *Notice of Denial* of respondent's *Offer of Compromise.*[35]

On the other hand, respondent asserts that the WDL was correctly cancelled.[36]

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,[37] the Supreme Court clarified that the determination of the validity of a WDL issued by the CIR falls under the "other matters" jurisdiction of this Court:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue.** The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected.
>
> This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In *Pantoja v. David*, we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue. Also, in *Commissioner of Internal Revenue v. Court of Appeals*, the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court." *(Emphasis and underscoring supplied; Citations omitted)*

In accordance with the above ruling and in relation to Sections 7(a)(1) and 11 of RA 1125, as amended, judicial appeals questioning the validity of WDL should be filed within thirty (30) days from receipt thereof.

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[34] Court *En Banc*'s Docket, pp. 26-29.
[35] *Id.*
[36] *Id.*, pp. 140-142.
[37] G.R. No. 162852, December 16, 2004.

In the present case, however, respondent failed to file an appeal to question the validity of the WDL dated October 22, 2013 which it received the same on even date.[38] Instead of filing a Petition for Review before this Court, respondent merely filed an *Offer of Compromise* on May 2, 2014 before the BIR, more than six (6) months after it received the WDL.[39] As a consequence, the WDL attained finality and this Court was divested of any authority to review the validity thereof.

To reiterate, the present Petition for Review strictly involves a challenge to the correctness of the denial by petitioner of respondent's offer of compromise. Thus, the judicial review of this Court in the present case should focus only on the manner by which the CIR exercised its discretionary power to enter into compromise, *i.e.*, whether or not the parameters set by law were properly observed, or whether the CIR abused his discretion in denying or approving the compromise. Much like in the case of the deficiency assessment as discussed above, the present Petition for Review cannot, and shall not, be used as a "disguised protest" to assail the validity of the WDL after failing to avail of the proper remedy for contesting the same as provided by law and jurisprudence.

Given that the Court in Division's disposition of the present case was confined to its finding of invalidity of assessment for having been issued in violation of respondent's due process rights, the Court in Division failed to make a definitive pronouncement as regards the validity and/or correctness of the *Notice of Denial* dated June 1, 2016 of respondent's *Offer of Compromise* dated May 2, 2014. To give the Court in Division an opportunity to make a ruling as regards the foregoing issue, a remand of the case is in order.

WHEREFORE, the present Petition for Review is **GRANTED.** Accordingly, the Decision dated January 14, 2020 as well as the Resolution dated June 26, 2020 of the First Division of this Court in CTA Case No. 9475 are **REVERSED** and **SET ASIDE**.

Let the case be **REMANDED** to the Court in Division for the determination of the validity and/or correctness of the *Notice of Denial* dated June 1, 2016 of respondent New Farmers Plaza, Inc.'s *Offer of Compromise* dated May 2, 2014.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[38] Division Docket, Vol. I, p. 14.
[39] *Id.*

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice